IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 179 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ABDUL KHALIK MOHMAD HANIF

Versus

HANIFABANU WD/O MOHMAD HUSEIN ABDULGANI

Appearance:

1. Civil Revision Application No. 179 of 2001

MR NS SHETH for Petitioner No. 1 (absent)

MR SK BUKARI for Respondents

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 11/09/2002

ORAL JUDGEMENT

#. The original plaintiff-landlord filed HRP Suit

No.1798/75 against the present petitioner-original defendant-tenant for recovering the possession of the suit premises consisting of one room of 18' x 10' at the monthly rent of Rs.6/= on the ground of nonpayment of rent from 1.4.1972 and other grounds viz. causing nuisance and annoyance etc. That suit was decreed by the Trial Court against which the petitioner-tenant preferred Civil Appeal No.173/80 and the judgment and decree of eviction passed by the Trial Court was set aside. The same was challenged in revision before this court, which was also rejected. In that case the petitioner-defendant deposited Rs.1,098/= in all. After deducting the same, the amount due form the defendant was only Rs.282/= up to 31.5.1991. He was also required to pay the monthly taxes of the Corporation. Therefore, by notice dated 7.8.1991, his tenancy was once again terminated and suit for eviction and recovering of possession was filed against the defendant. That suit was decreed on 23.11.1998 on the ground of arrears of rent by the Trial Court. Against which Civil Appeal No.95 of 2000 was filed before the Appellate Bench of the Small Causes Court at Ahmedabad on 26.4.2002, which was barred by period of limitation by 513 days. Therefore, prayer was made to condone delay of 513 days in filing the appeal late and decide the appeal on merits.

#. On two grounds delay of 513 days was sought to be condoned; (1) that the defendant is an old person aged 75 years suffering from various deceased. Medical Certificate dated 18.4.2000 issued by the doctor was also produced. However, the Appellate Bench refused to condone the delay of 513 days in filing the appeal late vide its judgment and order dated 12.21.2000. This has been challenged by the petitioner-original defendant-tenant in this revision under Section 29(2) of the Bombay Rent Act.

#. This revision application was strongly opposed by the learned counsel for the respondent-landlords on the ground that in the application different diseases were mentioned. Whereas, the medical certificate was for different diseases. It was further contended that when the Appellate Bench of the Small Causes Court refused to condone the gross delay of 513 days in filing appeal late, then this court should not interfere with the same in its revisional jurisdiction under Section 29(2) of the Bombay Rent Act, the scope of which is very narrow and limited and except on the ground of error of law, court cannot interfere.

#. Having carefully gone through the impugned judgment

and order dated 12.12.2000 passed by the Appellate Bench of the Small Causes Court, in Civil Appeal No.95 of 2000, I am fully convinced that the appellate court committed grave error in not condoning the delay of 513 days occurred in filing the appeal late against the judgment and decree of eviction passed by the Trial Court.

#. It is not in dispute that the present petitioner-defendant-tenant is an old person aged 75 years suffering from various diseases. The suit premises is a small room consisting of 18' x 10' and its rent was only Rs.6/=. There was an old tenancy. Earlier suit was filed for recovering possession from the tenant dismissed right up to his court. Once again in 1991 another suit was filed on the almost same ground of arrears of rent. When the Trial Court decreed the suit and when sufficient cause is shown that the petitioner is a old person aged 75 years and suffering from various diseases, then on technical ground the Appellate Bench should not have refused to exercise its discretion in favour of the tenant. Time and again, this court and Hon'ble Supreme Court has held that the courts are there to do substantial justice and not the technical one. To throw out the case on such technical ground of limitation is strongly condemned by Hon'ble Supreme Court in case of Collector Land Acquisition, Anantnag Vs. Mst. Katiji reported in 1987 SC 1353, wherein, the Hon'ble Supreme Court laid down that when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

#. However, learned counsel for the respondents tried to rely upon the judgment of the learned single Judge of this court [Coram : A.K.Trivedi, J. (as he then was)] rejected in case of Soni Santaben Devshibhai Lodhiya Vs. Bhagwanji P. Mardiya reported in 2001(2) GLH (U.J.) 13 and submitted that where delay of only 22 days occurred, this court refused to condone the delay of 22 days, which was not sufficiently explained. It is true that in case of Soni Santaben's case (supra), learned Single Judge of this court refused to condone the delay of 22 days on the ground that he had given power of attorney on 16.8.1998 and his power of attorney holder had come to Junagadh from Ajmer and before he could move any application , he fell sick and on account of his sickness this delay occurred. On facts of that case, learned Single Judge was not inclined to accept that explanation. I fail to understand that how the aforesaid judgment of the learned Single Judge is of any help on the facts of this case,

which is narrated in nutshell. If the delay of 513 days is not condoned on facts of this case, then it would be a mockery of justice because a poor and sick tenant aged 75 years cannot be thrown out on such technical ground of limitation. It is unfortunate that the court below has simply closed its eyes to this most important aspect and in a cursory manner dismissed the appeal only on the ground of delay. This is nothing but shirking its responsibility to decide the matter on merits. This type of approach is required to be condemned in a strongest words. The courts are there for for doing substantial justice and not for this type of disposal of the cases.

#. In view of the above discussion, this petition is allowed and the impugned judgment and order dated 12.12.2000 passed in Civil Appeal No.95 of 2000 is hereby quashed and set aside and the matter is remanded to the Appellate Bench with a direction to restore the Civil Appeal No.95 of 2000 at its original number and by condoning the delay it should now decide the same strictly on merits and in accordance with law. Notice made absolute accordingly, with no costs.

(B.J.Shethna, J.)
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